1-27-2014

Order on January 17, 2014 Hearing (Vesta Holdings VIII, LLC)

Alice D. Bonner
Fulton County Superior Court, Judge

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

Vesta Holdings VIII, LLC,	)	
	)	
Plaintiff,	)	CIVIL ACTION
	)	
v.	)	FILE NO. 2013CV234513
	)	
SPGA Acquisitions, LTD.,	)	
	)	
Defendant.	)	

ORDER ON JANUARY 17, 2014 HEARING

On January 17, 2014, the parties appeared before the Court on Defendants' Motion for Preliminary Injunction, SPGA and SPGA Affiliates' Motion to Add Parties, and Plaintiff's Motion to Strike Answer and for Entry of Default. Upon consideration of the arguments of the parties, the evidence in the record and the facts of the case, this Court finds as follow:

This dispute arises from a Servicing Agreement ("Agreement") between Vesta Holdings VIII, LLC ("Vesta") and SPGA Acquisitions, Ltd. ("SPGA"). The Agreement provided, in relevant part, that SPGA would invest in tax liens, tax deeds, and first-priority liens (together "Tax Assets") and Vesta, already in the Tax Asset business, would assist SPGA in choosing, acquiring and servicing the Tax Assets in exchange for SPGA timely funding the purchase price of the Tax Assets, in addition to paying a service fee. Under the Agreement, SPGA was entitled to all income until it recouped its investment; thereafter, the income would be split between the parties.

Vesta initiated this action, asserting a breach of contract claim against SPGA for failing to pay the servicing fees as required under the Servicing Agreement for Vesta's

efforts to service the Tax Assets. On the other hand, SPGA claims that, per the Servicing Agreement, no servicing fees were to be paid because SPGA had not yet recouped a full return of its investment, which SPGA contends has not yet occurred due to misconduct of Vesta.

1. Defendant's Motion for Preliminary Injunction

Pursuant to the Servicing Agreement, all proceeds generated by the Tax Asserts "shall be deposited on a daily basis in the Redemption Account upon receipt thereof" by Vesta. Section 7.02. Moreover, the Servicing Agreement provides that SPGA, not Vesta, has exclusive authority to withdraw funds from the Redemption Account. Section 7.03. It is undisputed that Vesta has unilaterally withdrawn $254,900 from proceeds that would otherwise fund the Redemption Account.

SPGA also complains that Vesta stopped generating monthly reports detailing the payments collected on SPGA's behalf and stopped providing access to a database that reflected real-time information related to its investment. However, such access has now apparently been restored.

SPGA seeks a preliminary injunction ordering Vesta to:

1) Provide a complete accounting of all payments received on SPGA's behalf under or relating to the Servicing Agreement;

2) Cease withholding access from SPGA to Vesta's Pioneer database. Vesta shall provide the same access to SPGA that it provided before initiating this lawsuit;

3) Cease withholding from SPGA monthly reports regarding SPGA's investment under the Servicing Agreement. Vesta shall provide the same kind of

monthly reports to SPGA (on a monthly basis) that it provided before initiating this lawsuit; and

4) Cease the conversion of any money collected by Vesta under or relating to the parties' Servicing Agreement. Vesta shall within 3 business days place all previously converted funds in an escrow account in SPGA's name. All future money collected by Vesta under or relating to the Servicing Agreement shall also be placed in the same escrow account in SPGA's name.

The trial court "may issue an interlocutory injunction to maintain the status quo until a final hearing if, by balancing the relative equities of the parties, it would appear that the equities favor the party seeking the injunction." Id. To balance these equities, the trial court should consider four things: (1) whether there is a substantial threat that the moving party will suffer irreparable injury if the injunction is not granted; (2) the threatened injury to the moving party outweighs the threatened harm that the injunction may do to the party being enjoined; (3) there is a substantial likelihood that the moving party will prevail on the merits of her claims at trial; and (4) granting the interlocutory injunction will not disserve the public interest. Grossi Consulting, LLC v. Sterling Currency Grp., LLC, 290 Ga. 386, 387-88, 722 S.E.2d 44, 46 (2012). But, "there must be some vital necessity for the injunction." Price v. Empire Land Co., 218 Ga. 80, 85, 126 S.E.2d 626 (1962).

After considering the parties' presentations and the evidence of record, the Court is not inclined to exercise its discretion to grant injunctive relief in this case. Although the Court looks with disfavor at any efforts on the part of a party, such as Vesta, to exercise self-help in clear violation of its contractual obligations, the Court finds that the

requisite threat of irreparable harm is lacking here to support a preliminary injunction in SPGA's favor. Citing the record of another case, SPGA argues that Vesta has a history of engaging in fraudulent transfers to evade judgments. However, SPGA has failed to point to any specific evidence here that would suggest that any judgment rendered in its favor would afford insufficient relief. Compare SRB Inv. Servs., LLLP v. Branch Banking & Trust Co., 289 Ga. 1, 5-6, 709 S.E.2d 267, 272 (2011) (involving fraudulent transfers which motivated the court to hold "[e]quity may enjoin the defendant as to transactions involving fraud," OCGA § 9–5–11). Accordingly, Defendants' motion is **DENIED**.

2. SPGA and SPGA Affiliates' Motion to Add Parties

SPGA and its affiliates, Myriad Asset Management LLC, 2011 Sanat Capital LLC, SPGA Funding, Ltd., Shelter Point Tax Capital LLC, and TDRES 2012 LLC (the "SPGA Affiliates") move the Court to add the SPGA Affiliates as intervenors/co-counterclaimants in this case. Additionally, SPGA and the SPGA Affiliates move the Court to add Vesta's parent company, Rhea Investment Group, LLC ("Rhea"), and its principals, John E. Ramsey, and R. Richard Robinson, as counterclaim defendants.

Because Plaintiff has asserted no opposition to the request to add the SPGA Affiliates, the motion is **GRANTED** as to the SPGA Affiliates. The Court will turn now to the request to add Rhea and its principals as counterclaim defendants.

SPGA contends that Rhea is an indispensable counterclaim defendant because it guaranteed the obligations of Vesta under the Servicing Agreement.

"When the presence of parties other than those to the original action is required for the granting of complete relief in the determination of a counterclaim… the court

shall order them to be brought in as defendants as provided in this chapter, if jurisdiction of them can be obtained." O.C.G.A. § 9-11-13(h).

This provision is considered in conjunction with OCGA § 9-11-19(a)(1) that provides: "A person who is subject to service of process shall be joined as a party in the action if: (1) [i]n his absence complete relief cannot be afforded among those who are already parties." "The common thread in both statutes is that joinder be predicated upon granting 'complete relief.' This provision 'complete relief' embraces the desirability of avoiding repetitive lawsuits on essentially the same facts or subject matter, as well as the desirability of joining those in whose absence there might be a grant of hollow or partial relief to the parties before the court." Gardner v. Gardner, 276 Ga. 189, 190 (2003).

As a guarantor of the Servicing Agreement, Rhea faces the prospect of liability upon a finding that Vesta breached the Servicing Agreement. Moreover, the Court finds that, in order to afford SPGA complete relief consistent with the benefit of its bargain (i.e., the assurance that Rhea would be liable on any outstanding obligations of Vesta, an alleged "shell" company) Rhea is a necessary party to this action. Accordingly, the motion is **GRANTED** as to Rhea.

SPGA and SPGA Affiliates argue that Ramsey and Robinson are also necessary parties to this action because they allegedly personally directed, supervised, and perpetrated the conduct that gave rise to SPGA's counterclaims that allege negligence, self-dealing and breach of their duties as asset managers and agents. The Court agrees. See Stein v. Burgamy, 150 Ga. App. 860 (1979) (joinder of bank officer as

counterclaim-defendant who allegedly made fraudulent statements at issue in case against bank). Accordingly, the motion is **GRANTED** as to Ramsey and Robinson.

3. Plaintiff's Motion to Strike Answer and for Default Judgment

Finally, Plaintiff moves the Court to strike the answer of SPGA and to enter default judgment on the basis that SPGA initially failed to verify its answer as required on a suit on an open account. In open court, Plaintiff's counsel conceded that case law ran contrary to his request, in light of SPGA's subsequent filing of an amended verified answer. See DRST Holdings, Ltd. v. Brown, 290 Ga. 317 (2012). Accordingly, Plaintiff's motion is **DENIED**.

SO ORDERED this 27 day of January, 2014.

Alice D. Bonner

ALICE D. BONNER, SENIOR JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit

Copies to:

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